IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.83 OF 2007

IN

WRIT PETITION NO.1938 OF 2006

Sitaram Sakhtu Chaurasia .. Petitioner.

Versus

Municipal Corporation of Greater

Mumbai and Ors. .. Respondents.

Mr.S.J.Chaurasia with Mr.G.R.Mishra i/b.Ashoka Law Firm for petitioner.

Mr.A.Y.Sakhre for respondent (BMC).

CORAM : S.C.DHARMADHIKARI, J.

DATE : 14th September, 2007.

P.C.:

1. The petitioner had filed a writ petition in this Court being Writ Petition No.1938 of 2006 with regard to some unauthorised constructions carried out by one Raju Prabhakar Birje (respondent No.7) in Room No.10, 2nd floor of the subject building.

2. It appears that the building was repaired by the Repair Board and the repairs were completed in May, 2005.

3. The petitioner is also occupant of the said building and his neighbour, the said Birje had encroached upon the common passage on the 2nd floor of the said building. He had illegally constructed mezzanine floor / loft The petitioner complained about such unauthorised works. It appears that a notice under Section 351 of the Bombay Municipal Corporation Act was issued but no action was taken in furtherance thereof.

4. Accordingly, the petitioner filed a writ petition in this Court which was numbered as above and while disposing of this writ petition, the following order has been passed by this Court.

> "5. We do not intend to go into the merits of this allegations as in our view interest of justice shall be served if the concerned Assistant Commissioner of C Ward inspects the site and confirms himself whether the unauthorised construction in Room No.10 or the passage leading thereto has been removed by the Respondent No.7 or not. If on his inspection, the Assistant

Commissioner, C Ward finds that there is no unauthorised construction in the said room or the passage, the matter shall stand closed. On the other hand, if any unauthorised construction is found in Room No.10 or the passage, the concerned Assistant Commissioner shall initiate appropriate proceedings in accordance with law for removal of such unauthorised construction."

5. The complaint of Mr.Chaurasiya is that no action has been taken with regard to illegal 10 ft. mezzanine floor/loft which has been constructed by respondent No.7.

6. An affidavit has been filed by the Assistant Commissioner of Municipal Corporation, having his office at "C" Ward, in which the petitioner’s complaint has been referred to so also the order passed by this Court.

7. However, it is stated that a joint inspection was carried out by the officers of the Municipal Corporation alongwith that of the Repair Board. The room was inspected and unauthorised construction in the bathroom in Room No.10 was found to be removed by the said Birje.

8. However, with regard to the 10 ft. loft, this is

what is stated in para 3 (d)

> 3.(d) I say that as regards the loft in Room No.10, the same appeared to be old and not of recent origin. The MHADA officials present informed that the loft was authorised one as per their records. The loft is also reflected in the repair plan shown by MHADA officials on site. I say that certified copy of the plan was called for by these Respondents from MHADA and MHADA has issued a certified copy of the plan to the Respondents."

9. It is also stated that the unauthorised encroachment on the common passage by shifting the entrance door has also been removed..

10. I was not satisfied with this explanation although apology was tendered for the inaction by the respondent No.7 Corporation. I impressed upon the learned counsel appearing for the Corporation that the Corporation cannot go by version of the officials of the MHADA inasmuch as with regard to every unauthorised work or construction, it is the duty of the Municipal Corporation to take action in accordance with law. It cannot go by the opinion

expressed by any other officials. The Ward Officer represents the public body and he should take an independent decision. In such circumstances, I had directed that a responsible official of the Corporation should remain present today.

11. Mr.Sakhre, learned Senior Counsel, appearing for the Corporation after taking instructions from the Assistant Commissioner of Municipal Corporation states that with regard to the mezzanine floor/loft, a notice has been issued on 11th March, 2006 to Mr.Raju Birje. He submits that upon this notice, appropriate action in accordance with law will be taken after considering the explanation submitted by Mr.Birje so also the objections in writing, if any, forwarded by the petitioner before me. He states that this action would be completed within a period of four weeks from today. It is stated by Mr.Chaurasia, appearing for the petitioner that the petitioner would forward his written objections within a period of 10 days from today. Needless to state that it would be open for the petitioner to take inspection of the files and obtain a copy of the explanation submitted by Mr.Birje. The corporation should give 10 days time to Mr.Birje and thereafter consider the rival versions and pass appropriate orders within the time stipulated above

uninfluenced by any opinion of MHADA or other Public Body.

12. With regard to the entrance door being shifted by Mr.Birje thereby encroaching on the common passage, Mr.Sakhre states that the same has been removed but Mr.Chaurasia after producing photographs submits to the contrary. Mr.Sakhre once again after taking instructions from the officers of Municipal Corporation, who are present in Court makes a statement that if this encroachment is not removed, then, suitable action with regard to the same will also be taken in accordance with law within the period stipulated above.

13. In the light of the above, I accept the unconditional apology tendered by Mr.Sharad S.Dalvi, Assistant Commissioner of Municipal Corporation, "C" Ward on affidavit and noting his presence in Court, discharge the contempt proceedings.

14. All concerned to act upon an authenticated copy of this order.

(S.C.Dharmadhikari, J.)